THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 18659 of 2006

13-09-2006

Between:-

Kanakala Pydi Naidu and two others.

Petitioners

And

Government of Andhra Pradesh rep., by its district Collector, Visakhapatnam and another.

Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 18659 of 2006

Oral order:

The petitioners seek a declaration that the action of the respondents in failing to register the lands in survey No. 102 (old No. 88 part), Chinagadhila village, Chinagadhila mandal, Visakhapatnam district is illegal and for a direction to the respondents to register the land in the names of the petitioners on payment of market value.

The petitioners admit to being encroachers of land in an extent of Ac.08-92 cents and to being in possession since their forefathers time. The lands are stated to have been part of the Viziayanagaram Estate, which was abolished under the Estates Abolition Act. Even after the abolition of the Estate, the petitioners, through their ancestors claim to be under continuous possession. The

petitioners assert that an application was made for grant of patta. This was rejected. Revision was preferred before the Director of Settlement. This was also dismissed and has become final. Writ Petition No. 6103 of 1980 was filed which was also dismissed by the order dated 07-04-1983. The writ appeal thereagainst has also been rejected. The petitioners do not state who submitted application for patta, who filed the revision before the Director of Settlement or the writ petition and the writ appeal. Be that as it may. The petitioners also assert that they are in possession of the land since more than fifty years and that W.P.No. 11140 of 1987 was filed seeking to restrain the Government from evicting them without the due process of law. This writ petition was disposed of directing that the civil court be approached for appropriate relief. Thereafter O.S.No. 112 of 1998 was filed before the learned Principal Senior Civil Judge, Visakhapatnam wherein no order was granted in favour of the petitioners.

The petitioners further assert that the Revenue Divisional Officer, Vizianagaram had filed LGC.No. 13 of 1988 before the learned Special Court under the A.P. Land Grabbing (Prohibition) Act, 1982 asserting that the petitioners' father is a land grabber. By the order dated 26-09-1989 the petitioners' father was declared a land grabber and an injunction was issued restraining the petitioners' father from interfering with the possession of

the land. Aggrieved by the order by the Special Court, the petitioners' father filed W.P.No. 10806 of 1989. This writ petition was dismissed for default by the order dated 04-03-1997. That order had become final.

The petitioners state that in respect of an adjacent land in survey Nos. 112/1, 112/2 and 112/3 of an extent of Ac.07-99 cents, similar proceedings were initiated by the Government against the occupant Smt. Golagani Krishnamma in LGC.No. 17 of 1989. The learned Special Court allowed the petition filed by the Revenue Divisional Officer. Aggrieved thereby, Smt. Golagani Krishnamma filed W.P.No. 20319 of 1993 before this court. This court disposed of W.P.No. 20319 of 1993 directing the respondents-authorities not to dispossess Smt. Golagani Krishnamma and also directed the petitioner therein to pay the market value of the land demanded by the authorities for obtaining registration of the lands. Such an order was passed by this court on 21-09-1999. The petitioners now claim equal treatment and equal judgment.

A few points of distinction require to be noticed:

(a) The writ petition filed by the petitioners' father (W.P.No. 10806 of 1989) against the order in LGC No. 13 of 1988 dated 26-09-1989 had admittedly been dismissed for default by an order dated 04-03-1997; whereas the W.P.No.20319 of 1993 said to have been filed by an adjacent land

owner was disposed of on merits by the order of this court dated 21-09-1999.

(b) The judgment of a learned Division Bench of this court dated 21-09-1999 in W.P.No. 20319 of 1993 reads as under:

"The case of the petitioner is that the land in an extent of Ac.7.99 cents in Sy.Nos. 112/1, 112/2 and 112/3 of Chinagadhila village, Vishakhapatnam is in his possession and cultivating the same for the past 45-50 years right from his forefathers. He has been in continuous possession of the same which was part of erstwhile Vizianagaram Zamindari Estates. While so, the Revenue Divisional Officer, 1st respondent herein filed a Land Grabbing Case in LGC No. 17 of 1989 in the Land Grabbing Court against the petitioner and 20 others alleging that the land in an extent of Ac.7.99 cents was grabbed. The tribunal having heard both sides found that the petitioner has not made any sales of the land and held that the petitioner is a land grabber. However the tribunal though held that the purchasers are also land grabbers did not pass a decree for restoration of possession from the subsequent purchasers. The petitioner submits that the tribunal without appreciation of the entire evidence and without adverting to the contention raised by the petitioner passed a decree against the petitioner and directed restoration of possession of the land in question. The petitioner claims that he has constructed two slab houses and two thatched sheds in an extent of Ac.0-10 cents which is in his occupation and actually residing there. It is further submitted that though the tribunal has permitted the purchasers to continue in possession of the land in their occupation on payment of the market value of the

land, the said relief has not been extended to the petitioner.

Therefore, it is submitted that the impugned order passed by the tribunal is discriminatory and violative of Article 14 of the Constitution of India.

It appears that the petitioner is in occupation of Ac.0-40 cents of land and constructed two slab houses and thatched sheds. It is brought to our notice that during the pendency of the writ petition the authorities issued demand notice calling upon the petitioner to pay Rs.2,70,000/- per acre being the market value of the land, which the petitioner is claiming.

Having regard to the facts and circumstances of the case, we consider it just and reasonable to direct the respondents authorities not to dispossess the petitioner from the land in his occupation and the petitioner is at liberty to pay the amount market value of the land demanded by the authorities and get the land registered in his name within three months from the date of receipt of a copy of this order. This order will not entitle the petitioner to plead for any equities."

In the respectful and considered view of this court, the order dated 21-09-1999 in W.P.No. 20319 of 1993 does not spell out any ratio, obligating precedential deference and confirmance. The order merely directs, without spelling out the underlying principles in support of the direction, that the respondents should not dispossess the petitioner therein from the land in her occupation and that the petitioner is at liberty to pay the amount of market value demanded by the State to get the land registered in

her name. The substantive or procedural right on the basis of which the direction was issued, is neither spelt out nor is inferable from the judgment. It is trite that it is only the *ratio decidendi* which binds the subsequent court and not the conclusion on facts. The conclusions on facts or particular conclusions or determinations have no precedential authority.

On the aforesaid analysis, the petitioners are not entitled to any remedy. No legal right is established and therefore no case is made out for issuance of a writ of Mandamus. The writ petition is accordingly dismissed at the stage of admission. No costs.

_____

GODA RAGHURAM, J

Dated:13-09-2006
Pvks/*